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January 16, 2020

Hon. Denise Cote, U.S.D.J.
United States District Court
500 Pearl Street
New York, NY 10007

BY MAIL and EMAIL to
CoteNYSDChambers@nysd.uscourts.gov

NOTICE FILED UNDER SEAL

Re: *Spin Master, Ltd. v. E. Mishan & Sons, Inc.*
Civ. Action No. 1:19-cv-09035 (DLC) (S.D.N.Y.)
Request to file under seal -- [NMZ Ref. J137-4033]

Dear Judge Cote:

We write on behalf of defendant E. Mishan & Sons, Inc. ("Emson") to request that specific portions of the Declaration of James J. Donohue (Exhibit DX60 admitted in evidence at the December 4, 2019 Preliminary Injunction Hearing) and accompanying Exhibits DX45, DX51 and DX52 (also admitted) be filed under seal. Emson is attempting to comply with the Court's Individual Rules of Practice 3.H and 5.C.ii requiring that "affidavits constituting the direct testimony of all witnesses who were called at trial [preliminary injunction motion as per Rule 3.H] shall be publicly filed on CM/ECF by the party who called the witness."

Notwithstanding this Rule, the cited material is governed by a Protective Order in this action (Dkt. 30) as it contains materials designated "Confidential Attorneys Eyes Only" by Plaintiff. Emson seeks permission pursuant to Individual Rule 4.A to file portions of DX60 and all of DX45, DX51, and DX52 under seal on the ECF system.

Specifically, Emson requests that the following be filed in the public record under seal and redacted from publicly filed documents on ECF:

- i) Portions of footnote 1 on page 1 of DX60;
- ii) The figure in paragraph 8 on page 3;
- iii) Portions of paragraph 9 on page 4;
- iv) Footnote 12 on page 4;
- v) All but the last sentence of paragraph 15 on page 7 including the figure;
- vi) All of paragraph 17 on page 8;
- vii) All but the first sentence of paragraph 18 on pages 8-9, including the figure;
- viii) DX45;
- ix) DX51; and
- x) DX52.

January 16, 2020

Page 2

The sections of DX60 indicated above are highlighted by the red boxes in the copy of the declaration accompanying this letter and include information Plaintiff has designated confidential pursuant to the Protective Order. Emson contends that there are countervailing privacy concerns that would outweigh against any presumption of public access to these documents. For example, these documents purportedly contain proprietary financial information of the Plaintiff and thus Emson is judicially barred from publicly disclosing such information. See Dkt. 30.

Pursuant to the Court's Individual Rules of Practice, Emson attaches hereto a full copy of the declaration, highlighted to indicate the portions for which Emson seeks redaction on the public record. Emson has circulated the highlighted declaration to Plaintiff and certifies that it includes all portions of the document Plaintiff has indicated should be filed under seal. The highlighted portions are narrowly tailored to contain only the confidential information that should be shielded from public view. The entirety of DX45, DX51, and DX52 are requested to be under seal and are thus not highlighted. Emson also seeks to file DX43 and DX44 (also admitted on 12/4/19) on the ECF system along with the declaration, however, no portions of these two exhibits need be under seal.

Emson will file a copy of this letter on the ECF system (without attachments) and respectfully requests that the Court grant permission to file the indicated materials under seal.

Respectfully submitted,

s/ Alan Federbush

Alan Federbush

cc: All counsel of record by ECF and email

The existence of a confidentiality agreement does not control whether "judicial documents" can be redacted or filed under seal. The requested redactions are approved with the following exceptions:

iii: the dollar figure in the last line of #9 may be redacted;

iv; v; and

vii: the table may be redacted and the dollar figures in the preceding sentences.

Any party objecting to these rulings must do so by 1/22/20. As set forth in the 11/1/19 scheduling order, trial exhibits are not to be filed on ECF. Because direct testimony is provided by affidavit, affidavits must be filed on ECF post trial.

Plaintiff's
1/17/20